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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined fifth and sixth periodic reports of Portugal

Addendum

Additional information received from Portugal on follow-up to the concluding observations regarding paragraphs 8 (b) (c) and 9 (a) (c)*

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* The present document is being issued without formal editing.

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Fundamental safeguards (paragraph 8)

B. Ensure that suspects are informed of and are able to exercise their rights at the very moment of their deprivation of liberty, and are informed of the reasons for their detention

1. In addition to the information already provided in document CAT/C/PRT/5-6, we would like to clarify some aspects of the detainee's rights. Under Article 61 (1) of the Code of Criminal Procedure (hereinafter CCP), at all stages of the proceedings, including the moment the moment they are detained, the defendant has the right to:

(a) Attend all procedural acts that directly affect him;

(b) Be heard by the court or by the examining judge whenever they render a decision that personally affects him;

(c) Be informed on charges against him prior to making any statements before an authority;

(d) Refuse answering any questions addressed by an authority on charges against him and on the substance of his statements on them;

(e) Choose a lawyer or ask the court to appoint him a defence counsel;

(f) Be assisted by a defence counsel in all procedural acts where he takes part and, when detained, to contact such counsel in privacy;

(g) Take part in the inquiry and examination, propose evidence and require any necessary measures;

(h) Be informed on his rights by the judicial authority or criminal police body before which he must appear;

(i) Appeal, under the law, against any decisions to his detriment.

2. Additionally, under the provisions for first judicial examination (Article 141 of the CCP) the arrested defendant who is not to face trial immediately shall be examined by an examining judge within 48 hours following their arrest and, for such a purpose, a detailed description of the grounds for the arrest and of the evidence supporting such an arrest is given. The examination is exclusively conducted by the examining judge, with the assistance of a Public Prosecutor and of the defence counsel and in the presence of a court clerk.

3. Lastly, one must also bear in mind that the Portuguese constitutional law lists the situations where exceptionally admits the deprivation of liberty (Article 27 (3) of the Constitution of the Portuguese Republic, hereinafter, the Constitution) and in all of them the detainees have the right to be informed immediately and in a comprehensible manner of the reasons for the detention and of their rights (Article 27 (4) of the Constitution).

4. Thus, the law establishes a set of rights that guarantees to the detainees, from the outset of their detention, that they are informed of the reasons for their detention and of their rights, allowing them to exercise their legal rights.

C. Guarantee access to an *ex officio* lawyer, including consultations in private, as from the moment of deprivation of liberty and during interviews with law enforcement officials

5. Article 20 (1) of the Constitution enshrines the right to effective judicial protection for everyone even for those who lack sufficient financial resources. Subject to the terms of the law, everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority (Article 20 (2)). Under Article 208 of the Constitution the law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an essential element to the administration of justice.

6. Article 32 of the Constitution lays down the minimal safeguards applicable in criminal proceedings, specifically providing for safeguards of the defence such as the right to appeal, the right to choose counsel and to be assisted by a lawyer in relation to every procedural act. The cases and stages of procedure in which the assistance of a lawyer is mandatory are defined by law.

7. As mentioned above with regard to the recommendation 8 (b), the CCP ensures to detainees (Article 61 (1) (e) (f)) the right to choose a lawyer or ask the court to appoint him a defence lawyer and to be assisted by a defence lawyer in all procedural acts where he takes part and, when detained, to contact such counsel in privacy.

8. In addition to the set of rights laid down by Article 61 (1) of the CCP, under Article 64 (1) of the CCP, the assistance by a defence lawyer is mandatory:

(a) During the interrogation of an arrested or detained defendant;

(b) During interrogation by a judicial authority;

(c) During the preliminary hearing and court hearings;

(d) In any procedural acts other than the formal declaration as defendant, whenever the accused person has any visual, hearing or speaking impairment or is illiterate, cannot speak or understand the Portuguese language, is less than 21 years old, or where the issue of his excluded or diminished criminal liability has been raised;

(e) In case of ordinary or extraordinary appeal;

(f) In cases provided for by Articles 271 and 294;

(g) Where the trial hearings take place in absence of the defendant;

(h) In other cases determined by law.

9. Moreover, the court may appoint a defence lawyer for a defendant, at the court's or defendant's request, where the specific circumstances of the case show the need or the convenience for the defendant to be assisted. If the defendant does not have a lawyer or an appointed defence lawyer, the appointment of a lawyer is mandatory as of the moment when the person is formally charged. The identification of the defence lawyer shall be mentioned on the court order that closes the inquiry. In this case, the defendant shall be informed, on the charge document, that, if he is found guilty, he must pay the defence lawyer's fees except if he is granted legal aid, and that he may replace the defence lawyer that was appointed by a lawyer of his choice (Article 64 (2)(3)(4) of the CCP).

10. Furthermore, the Code of Execution of Sentences and Custodial Security Measures approved by Act No. 115/2009 of 12 October establishes, *inter alia*, that the detainee has the right to be informed at the time of entry in prison, and clarified where necessary, of his rights and duties, to have access to his file and to be informed of his procedural status and

the evolution and evaluation of the sentence or detention order, to be heard, submit requests, claims, complaints and appeals and challenge in the execution of sentences court the legality of prison services decisions and to receive information and legal advice from a lawyer (Article 7 (1)). This Code also grants to detainees to receive their lawyer and the confidentiality of these meetings is assured (Article 61 (1) (2)). This last right is also enshrined in Article 102 of the General Regulation for Prison Establishments approved by Decree Law No. 51/2011 of 11 April.

11. Additionally, the Regulation of the Conditions of Detention in the Facilities at the Criminal Police (*Polícia Judiciária*) and in Places of Detention in the Courts and in Services of the Public Prosecution, approved by Order of the Minister of Justice No. 12786/2009, of 19 May of 2009, lays down the obligation to provide, immediately and in a comprehensible manner, to the detainee upon their arrest information regarding the reasons for the detention and of their rights. This information includes the right to appoint a lawyer and to receive an informative leaflet with a summary of their rights. The provision of this information should be documented, by drawing up a term of notification and delivery, which must be signed by the detainee. The confidentiality of the meetings between the detainee and his lawyer is also assured.

Prompt, effective and impartial investigations (paragraph 9)

A. Ensure that all reports of torture or ill-treatment are investigated promptly, effectively and impartially by appropriate independent bodies at the criminal level, irrespective of disciplinary investigations

12. In addition to the information already provided and contained in documents CAT/C/PRT/5-6 and CAT/C/PRT/CO/5-6/Add.2, it must made be clear the role of the institutions dealing the investigation of alleged reports of torture or ill-treatment, the stages where they intervene and how they relate to each other.

13. Regarding the Ministry of Justice, the exercise of competences by the Office of Audit and Inspection (SAI) of the Directorate General for Rehabilitation and Prison Services (DGRSP), the Disciplinary and Inspection Unit of the Criminal Police (PJ) and the General Inspectorate for Justice Services is strictly delimited by the respective organic laws and there is no overlap between the work carried out by them.

14. On the other hand, during the investigations accomplished by each one of these institutions, if any of them conclude that there are facts that may entail criminal sanctions, they must transmit this finding to the Public Prosecutor's Office, the competent authority to conduct criminal investigations and criminal proceedings.

15. It must also be taken into consideration that not all disciplinary offences entail criminal liability and the fact-finding conducted by the authorities specified in point 2. may conclude, also, in the filing of the complaint or of the finding resulting of their *ex officio* activities.

16. Lastly, the disciplinary procedure is independent of the criminal proceedings, since the grounds and purposes of the two jurisdictions differ, as well as the assumptions of their respective responsibilities. In fact, the disciplinary offense aims at preserving the functional capacity of the service and the criminal offense is aimed at defending the juridical assets essential to life in society. Hence, the fact that the accused is acquitted in a criminal process does not, in principle, preclude his punishment in the context of a disciplinary proceeding brought on the basis of the same facts.

C. Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that their victims are afforded appropriate redress

17. Regarding the victims' right to obtain adequate redress, in addition to the information already provided and contained in document CAT/C/PRT/5-6, additional reference should be made to the role played by the Commission for the Protection of Victims of Crimes (CPVC) and the legal framework for the State compensation of victims of violent crimes.

18. Law No. 104/2009, of 14 September, established the legal framework for the State compensation of victims of violent crimes, including victims of crimes of torture, and created the Commission for the Protection of Victims of Crimes (CPVC), whose functioning is regulated by Decree-Law No. 120/2010, of 27 October.

19. The duty to compensate the victim falls to the offender but, in some cases, the State may advance this compensation when the victim is facing financial difficulties as a result of the crime and it is impossible to obtain compensation from the offender within a reasonable period.

20. The Commission is the body in charge of deciding, according to legal criteria, whether applicants have the right to compensation as victims of violent crimes, and the amount of compensation. The Commission publishes every year a report of its activity and, in cooperation with public or private entities, makes available to the general public its activity as well as the remedies victims can use to obtain compensation for violent crimes.

21. The figures available show that between 2005 and 2015 there was an increase of the total amount of the compensations granted by this Commission, as it can be seen from the annex.

22. More recently, it should be underlined that the adoption of Law No. 130/2015, of 4 September, regarding the victim statute, which implements Directive 2012/29/EU, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, has contributed to strength considerably the rights of crime victims.

23. According to the abovementioned statue, the statute applies to any victim, regardless of their origin, nationality, social condition, sex, race, ethnicity, language, age, religion, impairment, political and ideological convictions, sexual orientation, culture and educational level.

24. Briefly, it is considered "victim":

(i) the natural person who has suffered harm, including an attack on their physical or mental integrity, moral or emotional damage, or damage to property, directly caused by act or omission, under the commission of a crime;

(ii) the family members of a person whose death has been directly caused by a criminal offense and that have suffered harm as a result of that death. For this matter, within the concept of victim it is included '*the surviving spouse not legally separated from persons and property, or the person who coexisted with the victim in conditions similar to those of spouses, descendants and ascendants, in the strict extent that they have suffered damage by the death, except the offender who caused the death*'.

25. Among others, the statute grants the victim the right to be informed regarding legal aid, the requirements governing the right to compensation and the conditions where the victim is entitled to interpretation and translation.

26. Additionally, this statute recognizes the right of all victims of crime to an adequate level of protection also extensive, where appropriate, to the victims' relatives on what concerns their security and protection of private life, whenever there are serious threats of reprisal, revictimization or strong indications that the right to privacy of the victim may be disturbed.